



IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): James F. Zucherman, et al.  
Appl. No.: 10/685,134  
Confirm. No.: 4485  
Filed: October 14, 2003  
Title: TOOLS FOR IMPLANTING AN ARTIFICIAL  
VERTEBRAL DISK AND METHOD

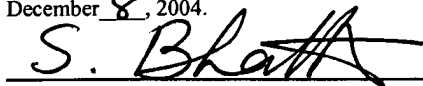
PATENT APPLICATION

Art Unit: 3731  
Examiner: Jessica Baxter

Customer No. 23910

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence is being deposited in the United States  
Postal Service with sufficient postage as first class mail in an envelope addressed to  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on  
December 8, 2004.



(Attorney Signature)

Suvashis Bhattacharya, Reg. No. 46,554

Signature Date: December 8, 2004

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

***Enclosed with this statement are the following:***

- ✓ Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- ✓ The present application is being/was filed after June 30, 2003. In accordance with the pre-official gazette waiver of 37 CFR 1.98 (a)(2)(i) posted at: [pac/dapp/opla/preognotice/idswouscopies.htm](http://pac/dapp/opla/preognotice/idswouscopies.htm), copies of cited U.S. patents and publications are not enclosed. However, copies of cited foreign patent documents and non-patent literature are enclosed in accordance with 37 CFR 1.98(a)(2), as still required, except for those items designated by an asterisk (\*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which

complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

— The present application was filed prior to June 30, 2003. A copy of each cited document as required by 37 C.F.R. §1.98 is enclosed, except for those items designated by an asterisk (\*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

— If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(i). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

✓ ***PTA Statement under 37 C.F.R. §1.704(d).*** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

***This statement should be considered because:***

✓ **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);  
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;  
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,  
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

— **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.  
-- AND (check at least one of the following) --
  - (1) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).  
-- OR --
  - (2) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— 37 C.F.R. §1.97(d). Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

- (1) It is being filed on or before payment of the Issue Fee;  
-- AND --
- (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);  
-- AND --
- (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

✓ **Fee Authorization.** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

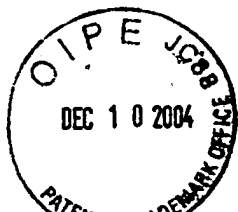
Respectfully submitted,

FLIESLER MEYER LLP

Date: 12/8/04

By: S. Bhattacharya  
Suvashis Bhattacharya  
Reg. No. 46,554

**Customer No. 23910**  
FLIESLER MEYER LLP  
Four Embarcadero Center, Fourth Floor  
San Francisco, California 94111-4156  
Telephone (415) 362-3800



Form PTO 449 (Substitute)  <b>Information Disclosure Statement</b> <b>BY APPLICANT</b> (Use several sheets if necessary)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	Attorney Docket Number KLYCD-05009US1	Serial/Patent Number 10/685,134
	Applicant/Patent Owner James F. Zucherman, et al.		
	Filing/Issue Date October 14, 2003	Group Art Unit 3731	

### U.S. PATENTS

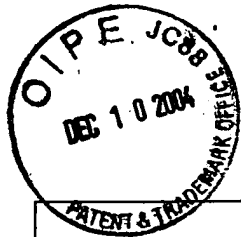
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
	1.	5,352,225	10/04/1994	Yuan et al.			
	2.	5,454,812	10/03/1995	Lin			
	3.	5,527,312	6/18/1996	Ray			
	4.	5,554,191	9/10/1996	Lahille et al.			
	5.	6,048,342	4/11/2000	Zucherman			
	6.	6,068,630	5/30/2000	Zucherman			
	7.	6,190,414	2/20/2001	Young et al.			
	8.	6,368,351	4/9/2002	Glenn et al.			
	9.	6,458,131	10/1/2002	Ray			

### U.S. PATENT PUBLICATIONS

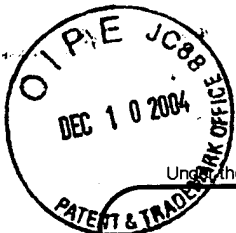
Examiner Initial		Patent Application Publication Number	Publication Date	Applicant

### PENDING U.S. PATENT APPLICATIONS

Examiner Initial		Application Number	Filing Date	First Named Inventor	Petition to Expunge? Yes   No
	10.	2001/0012938	08/09/2001	Zucherman et al.	
	11.	2004/0138750	07/15/2004	Mitchell	
	12.	2004/0143332	07/22/2004	Krueger et al.	



FOREIGN PATENT DOCUMENTS							
Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Translation Yes   No
<b>OTHER DOCUMENTS</b> (Include author (if any), title, publisher and place of publication, date and pertinent pages)							
<u>Examiner</u>				<u>Date Considered</u>			
<b>*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</b>							
<hr/>							
*1 = Copy not submitted because it was submitted in prior application SN / _____, filed _____, 20____, relied on under 35 USC §120.							
*2 = Copy not submitted because it was submitted in prior application SN / _____, filed _____, 20____, relied on under 35 USC §120.							



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/685,134
	Filing Date	10/14/2003
	First Named Inventor	James F. Zucherman
	Art Unit	3731
	Examiner Name	Jessica R. Baxter
Total Number of Pages in This Submission	Attorney Docket Number	KLYCD-05009US1

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Copies of International Search Reports
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Suvashis Bhattacharya Fliesler Meyer LLP	Customer Number: 23910
Signature		Reg. No.: 46,554
Date	12/8/04	

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Typed or printed name	Suvashis Bhattacharya	
Signature		Date 12/8/04

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.